IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

Crl.MC.No. 92 of 2007()

CC.369/1999 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE

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PETITIONER/ACCUSED:

CHANDRASEKHARA K., S/O. SUBBA POOJARI
RAJKAMAL CANTEEN, OPP. MEHABOOB THEATRE
K.P.R. RAO ROAD, KASARAGODE.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS/COMPLAINANT & STATE:

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1. SUB INSPECTOR OF POLICE,
KASARAGODE POLICE STATION.

2. STATE, REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKEN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 92 of 2007

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Dated this the 12th day of January, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I. Act. The sentence has now become final with the order passed by this Court in revision. The order in the revision directed the petitioner to appear before the learned Magistrate on 16.9.2006.

2. On that day he did not appear. It is submitted that he was involved in an incident, in which he had suffered injuries. There was a case and counter case in respect of that incident. The petitioner was hospitalised. It is said that policemen were posted in the hospital for surveillance. It was reported to the learned Magistrate on 16.9.06 that the petitioner is in the hospital and surveillance is there for him. The learned Magistrate appears to have issued a warrant for his production. He was produced before the learned Magistrate on 24.11.06. The learned Magistrate, consequent to the failure of the petitioner to pay the amount of compensation, sent him to prison to undergo the default sentence. The petitioner made a request that the

period from 16.9.06 to 24.11.06 may be reckoned as period of sentence undergone by him for default of payment. The learned Chief Judicial Magistrate did not accept this contention. Set off cannot be granted against a default sentence, it was held. The petitioner claims to be aggrieved by the impugned order.

3. What is the grievance? The learned counsel for the petitioner was requested to explain. On 16.9.06 the petitioner had admittedly not appeared before the learned Magistrate. The petitioner was not sent to prison with a warrant of commitment to undergo default sentence on 16.9.06. Nay, it is not the petitioner's case even that he was remanded by any court on 16.9.06. The fact that the petitioner was in the hospital and policemen were on surveillance duty outside cannot convert the period spent by him in the hospital to period of imprisonment nor can it entitle him to claim the period of alleged imprisonment as the period of default imprisonment to be undergone in the Section 138 prosecution.

4. The counsel relies on the expression “production warrant” used by the learned Magistrate in the order issued on 24.11.06. From this an argument is built that the person must have been in custody. I am unable to accept that contention. Even assuming that the petitioner was in custody in

connection with some other case, the period of detention undergone by him in such other case cannot obviously be set off against the period of imprisonment in default, which he should undergo in this case. I do not, in these circumstances, find any merit in the prayer made.

5. This Crl.M.C. is hence dismissed.

(R. BASANT)
Judge

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